

AMENDED IN SENATE AUGUST 22, 2014

AMENDED IN SENATE JUNE 26, 2014

AMENDED IN ASSEMBLY MAY 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2678

**Introduced by Assembly Member Ridley-Thomas
(Coauthor: ~~Assembly Member Chesbro~~)**

February 21, 2014

~~An act to amend Section 8670.54 of the Government Code, relating to oil spills. An act to amend Sections 8670.7.5, 8670.29, and 8670.40 of, and to repeal and add Section 8670.95 of, the Government Code, relating to oil spill prevention and response.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2678, as amended, Ridley-Thomas. ~~Oil spills: Oil Spill Technical Advisory Committee. Oil spills: oil spill prevention and response.~~

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. Existing law requires the administrator to adopt and implement regulations and deems the adoption of certain regulations by the administrator to be an emergency.

This bill would require the administrator to promulgate specified regulations by July 1, 2016.

Existing law requires an oil spill contingency plan to, at a minimum, include certain requirements, among which is a requirement to describe the strategies for the protection of environmentally sensitive areas. Existing law requires an oil spill contingency plan for a facility to include provisions detailing locations of environmentally sensitive areas requiring special protection.

This bill would revise these requirements to require instead the identification of environmentally sensitive areas and environmental sites requiring special protection, and to describe appropriate protection strategies. This bill would remove the requirement that an oil spill contingency plan for a facility include provisions for site security and control, for emergency medical treatment and first aid, for safety training, and detailing site layout.

Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to be sufficient to implement oil spill prevention activities, but not to exceed \$0.065 per barrel of crude oil or petroleum products. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury and moneys in the fund are available, upon appropriation by the Legislature, for specified purposes. Existing law requires the oil spill prevention and administration fee to be imposed upon a person owning crude oil at the time that the crude oil is received at a marine terminal by specified modes of delivery from within or outside the state.

This bill would require that fee to be imposed at the time that the crude oil is received at a refinery instead of at a marine terminal. This bill would state legislative intent only to collect the fee on crude oil or petroleum products upon first delivery to a refinery or marine terminal and not upon subsequent movement of that same oil or products derived after that first delivery.

This bill would state legislative intent that the act is a matter of statewide concern and that the act is to be interpreted and implemented so as not to conflict with specified federal law or to prevent trains that meet the requirements of federal law from entering the state.

~~Existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, governs oil spill prevention and response within the state. Existing law also establishes the Oil Spill Technical Advisory Committee to provide public input and independent judgment of the actions of the administrator for oil spill response. The committee is composed of 14 members and the Governor is required to appoint as one of these members a person who has worked in state government.~~

~~This bill would instead require the Governor to appoint a member who is a faculty member of the Karen C. Drayer Wildlife Health Center at the University of California at Davis or the Director of the Oiled Wildlife Care Network. The bill would also increase the number of members of the committee to 16, by requiring the Governor to appoint 2 additional members, one of whom would represent an environmental group with an interest in protecting inland natural resources from oil spills and one of whom would represent an environmental justice group concerned about the risk of oil spills from railroad tank cars in disadvantaged communities.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8670.7.5 of the Government Code is
2 amended to read:
3 8670.7.5. (a) The administrator may adopt regulations to
4 implement this chapter pursuant to the Administrative Procedure
5 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3).
7 (b) (1) An emergency regulation adopted pursuant to
8 amendments made to this chapter by Senate Bill 861 of the
9 2013–14 Regular Session (*Chapter 35 of the Statutes of 2014*)
10 shall be deemed an emergency and necessary to avoid serious harm
11 to the public peace, health, safety, or general welfare for the
12 purposes of Sections 11346.1 and 11349.6, and the administrator
13 is hereby exempt from the requirement that he or she describe facts
14 showing the need for immediate action and from review by the
15 Office of Administrative Law.
16 (2) Notwithstanding Section 11346.1, an emergency regulation
17 adopted pursuant to paragraph (1) shall remain in effect for 12
18 months or until readopted by the administrator, whichever is earlier.
19 (3) *By July 1, 2016, the administrator shall promulgate all*
20 *regulations to implement changes made by Senate Bill 861 of the*
21 *2013-14 Regular Session (Chapter 35 of the Statutes of 2014).*
22 SEC. 2. Section 8670.29 of the Government Code is amended
23 to read:
24 8670.29. (a) In accordance with the rules, regulations, and
25 policies established by the administrator pursuant to Section

1 8670.28, an owner or operator of a facility, small marine fueling
2 facility, or mobile transfer unit, or an owner or operator of a tank
3 vessel, nontank vessel, or vessel carrying oil as secondary cargo,
4 while operating in the waters of the state or where a spill could
5 impact waters of the state, shall have an oil spill contingency plan
6 that has been submitted to, and approved by, the administrator
7 pursuant to Section 8670.31. An oil spill contingency plan shall
8 ensure the undertaking of prompt and adequate response and
9 removal action in case of a spill, shall be consistent with the
10 California oil spill contingency plan, and shall not conflict with
11 the National Oil and Hazardous Substances Pollution Contingency
12 Plan (NCP).

13 (b) An oil spill contingency plan shall, at a minimum, meet all
14 of the following requirements:

15 (1) Be a written document, reviewed for feasibility and
16 executability, and signed by the owner or operator, or his or her
17 designee.

18 (2) Provide for the use of an incident command system to be
19 used during a spill.

20 (3) Provide procedures for reporting oil spills to local, state,
21 and federal agencies, and include a list of contacts to call in the
22 event of a drill, threatened spill, or spill.

23 (4) Describe the communication plans to be used during a spill,
24 if different from those used by a recognized incident command
25 system.

26 ~~(5) Describe the strategies for the protection of environmentally~~
27 ~~sensitive areas.~~ *Identify environmentally sensitive areas and*
28 *environmental sites requiring special protection, and describe*
29 *appropriate protection strategies.*

30 (6) Identify at least one rated OSRO for each rating level
31 established pursuant to Section 8670.30. Each identified rated
32 OSRO shall be directly responsible by contract, agreement, or
33 other approved means to provide oil spill response activities
34 pursuant to the oil spill contingency plan. A rated OSRO may
35 provide oil spill response activities individually, or in combination
36 with another rated OSRO, for a particular owner or operator.

37 (7) Identify a qualified individual.

38 (8) Provide the name, address, and telephone and facsimile
39 numbers for an agent for service of process, located within the

1 state and designated to receive legal documents on behalf of the
2 owner or operator.

3 (9) Provide for training and drills on elements of the plan at
4 least annually, with all elements of the plan subject to a drill at
5 least once every three years.

6 (c) An oil spill contingency plan for a vessel shall also include,
7 but is not limited to, all of the following requirements:

8 (1) The plan shall be submitted to the administrator at least
9 seven days prior to the vessel entering waters of the state.

10 (2) The plan shall provide evidence of compliance with the
11 International Safety Management Code, established by the
12 International Maritime Organization, as applicable.

13 (3) If the oil spill contingency plan is for a tank vessel, the plan
14 shall include both of the following:

15 (A) The plan shall specify oil and petroleum cargo capacity.

16 (B) The plan shall specify the types of oil and petroleum cargo
17 carried.

18 (4) If the oil spill contingency plan is for a nontank vessel, the
19 plan shall include both of the following:

20 (A) The plan shall specify the type and total amount of fuel
21 carried.

22 (B) The plan shall specify the capacity of the largest fuel tank.

23 (d) An oil spill contingency plan for a facility shall also include,
24 but is not limited to, ~~all provisions for vessels that are in the~~
25 ~~operational control of the following provisions, as appropriate:~~
26 ~~facility for loading and unloading.~~

27 ~~(1) Provisions for site security and control.~~

28 ~~(2) Provisions for emergency medical treatment and first aid.~~

29 ~~(3) Provisions for safety training, as required by state and federal~~
30 ~~safety laws for all personnel likely to be engaged in oil spill~~
31 ~~response.~~

32 ~~(4) Provisions detailing site layout and locations of~~
33 ~~environmentally sensitive areas requiring special protection.~~

34 ~~(5) Provisions for vessels that are in the operational control of~~
35 ~~the facility for loading and unloading.~~

36 (e) Unless preempted by federal law or regulations, an oil spill
37 contingency plan for a railroad also shall include, but is not limited
38 to, all of the following:

39 (1) A list of the types of train cars that may make up the consist.

1 (2) A list of the types of oil and petroleum products that may
2 be transported.

3 (3) A map of track routes and facilities.

4 (4) A list, description, and map of any prestaged spill response
5 equipment and personnel for deployment of the equipment.

6 (f) The oil spill contingency plan shall be available to response
7 personnel and to relevant state and federal agencies for inspection
8 and review.

9 (g) The oil spill contingency plan shall be reviewed periodically
10 and updated as necessary. All updates shall be submitted to the
11 administrator pursuant to this article.

12 (h) In addition to the regulations adopted pursuant to Section
13 8670.28, the administrator shall adopt regulations and guidelines
14 to implement this section. The regulations and guidelines shall
15 provide for the best achievable protection of waters and natural
16 resources of the state. The administrator may establish additional
17 oil spill contingency plan requirements, including, but not limited
18 to, requirements based on the different geographic regions of the
19 state. All regulations and guidelines shall be developed in
20 consultation with the Oil Spill Technical Advisory Committee.

21 (i) Notwithstanding subdivision (a) and paragraph (6) of
22 subdivision (b), a vessel or facility operating where a spill could
23 impact state waters that are not tidally influenced shall identify a
24 rated OSRO in the contingency plan no later than January 1, 2016.

25 *SEC. 3. Section 8670.40 of the Government Code, as amended*
26 *by Section 37 of Chapter 35 of the Statutes of 2014, is amended*
27 *to read:*

28 8670.40. (a) The State Board of Equalization shall collect a
29 fee in an amount determined by the administrator to be sufficient
30 to pay the reasonable regulatory costs to carry out the purposes
31 set forth in subdivision (e), and a reasonable reserve for
32 contingencies. The annual assessment shall not exceed six and
33 one-half cents (\$0.065) per barrel of crude oil or petroleum
34 products. The oil spill prevention and administration fee shall be
35 based on each barrel of crude oil or petroleum products, as
36 described in subdivision (b). *It is the intent of the Legislature that*
37 *the State Board of Equalization only collect the fee on crude oil*
38 *or petroleum products upon first delivery to a refinery or marine*
39 *terminal as described in subdivision (b) and not upon subsequent*
40 *movement of that same oil or products derived after that first*

1 *delivery. Nothing in this section shall prohibit the State Board of*
2 *Equalization from determining the appropriate collection point at*
3 *the marine terminal or refinery.*

4 (b) (1) ~~The oil spill prevention and administration fee shall be~~
5 ~~imposed upon a person owning crude oil at the time that the crude~~
6 ~~oil is received at a marine terminal, by any mode of delivery that~~
7 ~~passed over, across, under, or through waters of the state, from~~
8 ~~within or outside the state, and upon a person who owns petroleum~~
9 ~~products at the time that those petroleum products are received at~~
10 ~~a marine terminal, by any mode of delivery that passed over, across,~~
11 ~~under, or through waters of the state, that originated from outside~~
12 ~~this state. The fee shall be collected by the marine terminal operator~~
13 ~~from the owner of the crude oil or petroleum products for each~~
14 ~~barrel of crude oil or petroleum products received.~~

15 ~~(2) The oil spill prevention and administration fee shall be~~
16 ~~imposed upon a person owning crude oil or petroleum products at~~
17 ~~the time that the crude oil or petroleum products are received at a~~
18 ~~refinery within the state by any mode of delivery that passed over,~~
19 ~~across, under, or through waters of the state, whether from within~~
20 ~~or outside the state. The refinery shall collect the fee from the~~
21 ~~owner of the crude oil or petroleum products for each barrel~~
22 ~~received.~~

23 (2) *The oil spill prevention and administration fee shall be*
24 *imposed upon a person owning crude oil at the time that the crude*
25 *oil is received at a refinery, by any mode of delivery that passed*
26 *over, across, under, or through waters of the state, that originated*
27 *from within or outside the state, and upon a person who owns*
28 *petroleum products at the time that those petroleum products are*
29 *received at a refinery, by any mode of delivery that passed over,*
30 *across, under, or through waters of the state, that originated from*
31 *within or outside this state. The fee shall be collected by the*
32 *refinery operator from the owner of the crude oil or petroleum*
33 *products for each barrel of crude oil or petroleum products*
34 *received.*

35 (3) (A) There is a rebuttable presumption that crude oil or
36 petroleum products received at a marine terminal or a refinery
37 have passed over, across, under, or through waters of the state.
38 This presumption may be overcome by a marine terminal operator,
39 refinery operator, or owner of the crude oil or petroleum products
40 by showing that the crude oil or petroleum products did not pass

1 over, across, under, or through waters of the state. Evidence to
2 rebut the presumption may include, but shall not be limited to,
3 documentation, including shipping documents, bills of lading,
4 highway maps, rail maps, transportation maps, related
5 transportation receipts, or another medium that shows the crude
6 oil or petroleum products did not pass over, across, under, or
7 through waters of the state.

8 (B) Notwithstanding the petition for redetermination and claim
9 for refund provisions of the Oil Spill Response, Prevention, and
10 Administration Fees Law (Part 24 (commencing with Section
11 46001) of Division 2 of the Revenue and Taxation Code), the State
12 Board of Equalization shall not do either of the following:

13 (i) Accept or consider a petition for redetermination of fees
14 determined pursuant to this section if the petition is founded upon
15 the grounds that the crude oil or petroleum products did or did not
16 pass over, across, under, or through waters of the state.

17 (ii) Accept or consider a claim for a refund of fees paid pursuant
18 to this section if the claim is founded upon the grounds that the
19 crude oil or petroleum products did or did not pass over, across,
20 under, or through waters of the state.

21 (C) The State Board of Equalization shall forward to the
22 administrator an appeal of a redetermination or a claim for a refund
23 of fees that is based on the grounds that the crude oil or petroleum
24 products did or did not pass over, across, under, or through waters
25 of the state.

26 (4) The fees shall be remitted to the State Board of Equalization
27 by the owner of the crude oil or petroleum products, the refinery
28 operator, or the marine terminal operator on the 25th day of the
29 month based upon the number of barrels of crude oil or petroleum
30 products received at a refinery or marine terminal during the
31 preceding month. A fee shall not be imposed pursuant to this
32 section with respect to crude oil or petroleum products if the person
33 who would be liable for that fee, or responsible for its collection,
34 establishes that the fee has already been collected by a refinery or
35 marine terminal operator registered under this chapter or paid to
36 the State Board of Equalization with respect to the crude oil or
37 petroleum product.

38 (5) The oil spill prevention and administration fee shall not be
39 collected by a marine terminal operator or refinery operator or
40 imposed on the owner of crude oil or petroleum products if the fee

1 has been previously collected or paid on the crude oil or petroleum
2 products at another marine terminal or refinery. It shall be the
3 obligation of the marine terminal operator, refinery operator, or
4 owner of crude oil or petroleum products to demonstrate that the
5 fee has already been paid on the same crude oil or petroleum
6 products.

7 (6) An owner of crude oil or petroleum products is liable for
8 the fee until it has been paid to the State Board of Equalization,
9 except that payment to a refinery operator or marine terminal
10 operator registered under this chapter is sufficient to relieve the
11 owner from further liability for the fee.

12 (7) On or before January 20, the administrator shall annually
13 prepare a plan that projects revenues and expenses over three fiscal
14 years, including the current year. Based on the plan, the
15 administrator shall set the fee so that projected revenues, including
16 any interest and inflation, are equivalent to expenses as reflected
17 in the current Budget Act and in the proposed budget submitted
18 by the Governor. In setting the fee, the administrator may allow
19 for a surplus if the administrator finds that revenues will be
20 exhausted during the period covered by the plan or that the surplus
21 is necessary to cover possible contingencies. The administrator
22 shall notify the State Board of Equalization of the adjusted fee
23 rate, which shall be rounded to no more than four decimal places,
24 to be effective the first day of the month beginning not less than
25 30 days from the date of the notification.

26 (c) The moneys collected pursuant to subdivision (a) shall be
27 deposited into the fund.

28 (d) The State Board of Equalization shall collect the fee and
29 adopt regulations for implementing the fee collection program.

30 (e) The fee described in this section shall be collected solely
31 for all of the following purposes:

32 (1) To implement oil spill prevention programs through rules,
33 regulations, leasing policies, guidelines, and inspections and to
34 implement research into prevention and control technology.

35 (2) To carry out studies that may lead to improved oil spill
36 prevention and response.

37 (3) To finance environmental and economic studies relating to
38 the effects of oil spills.

39 (4) To implement, install, and maintain emergency programs,
40 equipment, and facilities to respond to, contain, and clean up oil

1 spills and to ensure that those operations will be carried out as
2 intended.

3 (5) To reimburse the State Board of Equalization for its
4 reasonable costs incurred to implement this chapter and to carry
5 out Part 24 (commencing with Section 46001) of Division 2 of the
6 Revenue and Taxation Code.

7 (6) To fund the Oiled Wildlife Care Network pursuant to Section
8 8670.40.5.

9 (f) The moneys deposited in the fund shall not be used for
10 responding to a spill.

11 (g) The moneys deposited in the fund shall not be used to
12 provide a loan to any other fund.

13 (h) Every person who operates a refinery, a marine terminal in
14 waters of the state, or a pipeline shall register with the State Board
15 of Equalization, pursuant to Section 46101 of the Revenue and
16 Taxation Code.

17 (i) The amendments to this section enacted in Senate Bill 861
18 of the 2013–14 Regular Session shall become operative 90 days
19 after the effective date of Senate Bill 861 of 2013–14 Regular
20 Session.

21 *SEC. 4. Section 8670.95 of the Government Code is repealed.*

22 ~~8670.95. If any provision of this chapter or the application~~
23 ~~thereof to any person or circumstances is held invalid, that~~
24 ~~invalidity shall not affect other provisions or applications of the~~
25 ~~chapter that can be given effect without the invalid provision or~~
26 ~~application, and to this end the provisions of this chapter are~~
27 ~~severable.~~

28 *SEC. 5. Section 8670.95 is added to the Government Code, to*
29 *read:*

30 *8670.95. (a) It is the intent of the Legislature that this chapter*
31 *is a matter of statewide concern. It is the intent of the Legislature*
32 *that this chapter be interpreted and implemented so as not to*
33 *conflict with federal law with respect to the design, construction,*
34 *integrity testing, or operation of a vessel or facility. It is the intent*
35 *of the Legislature that this chapter be interpreted and implemented*
36 *so as not to prevent a train that meets the requirements of federal*
37 *law from entering the state contingent upon meeting the*
38 *requirements of this chapter.*

39 *(b) Each provision of this chapter stands alone and is severable.*
40 *If any provision is declared by a court to be unconstitutional,*

1 *preempted by federal law, or otherwise invalid, all of the other*
2 *provisions of this chapter are intended to, and shall remain, fully*
3 *effective and shall be interpreted to exclude the unconstitutional,*
4 *preempted, or otherwise invalid provisions. If any sentence, clause,*
5 *word, or portion of this chapter is for any reason held to be*
6 *unconstitutional, preempted by federal law, or otherwise invalid,*
7 *that holding shall not affect the remaining provisions of this*
8 *chapter. The Legislature hereby declares that it would have enacted*
9 *the particular section and each sentence, clause, word, or provision*
10 *thereof despite the fact that one or more sentences, clauses, words,*
11 *or provisions of a particular section may be held unconstitutional,*
12 *preempted by federal law, or otherwise invalid.*

13 ~~SECTION 1. Section 8670.54 of the Government Code, as~~
14 ~~amended by Chapter 35 of the Statutes of 2014, is amended to~~
15 ~~read:~~

16 ~~8670.54. (a) The Oil Spill Technical Advisory Committee,~~
17 ~~hereafter in this article, the committee, is hereby established to~~
18 ~~provide public input and independent judgment of the actions of~~
19 ~~the administrator. The committee shall consist of 16 members, of~~
20 ~~whom ten shall be appointed by the Governor, three by the Speaker~~
21 ~~of the Assembly and three by the Senate Committee on Rules. The~~
22 ~~appointments shall be made in the following manner:~~

23 ~~(1) The Speaker of the Assembly and Senate Committee on~~
24 ~~Rules shall each appoint a member who shall be a representative~~
25 ~~of the public.~~

26 ~~(2) The Governor shall appoint a member who has a~~
27 ~~demonstrable knowledge of marine transportation.~~

28 ~~(3) The Speaker of the Assembly and the Senate Committee on~~
29 ~~Rules shall each appoint two members who have demonstrable~~
30 ~~knowledge of environmental protection and the study of~~
31 ~~ecosystems.~~

32 ~~(4) The Governor shall appoint a member who has served as a~~
33 ~~local government elected official or who has worked for a local~~
34 ~~government.~~

35 ~~(5) The Governor shall appoint a member who has experience~~
36 ~~in oil spill response and prevention programs.~~

37 ~~(6) The Governor shall appoint a member who has been~~
38 ~~employed in the petroleum industry.~~

39 ~~(7) The Governor shall appoint a member who is a faculty~~
40 ~~member of the Karen C. Drayer Wildlife Health Center at~~

~~University of California at Davis or the Director of the Oiled Wildlife Care Network.~~

~~(8) The Governor shall appoint a member who has demonstrable knowledge of the dry cargo vessel industry.~~

~~(9) The Governor shall appoint a member who has demonstrable knowledge of the railroad industry.~~

~~(10) The Governor shall appoint a member who has demonstrable knowledge of the oil production industry.~~

~~(11) The Governor shall appoint a member who represents an environmental group with an interest in protecting inland natural resources from oil spills.~~

~~(12) The Governor shall appoint a member who represents an environmental justice group concerned about the risk of oil spills from railroad tank cars traveling through disadvantaged communities.~~

~~(b) The committee shall meet as often as required, but at least twice per year. Members shall be paid one hundred dollars (\$100) per day for each meeting and all necessary travel expenses at state per diem rates.~~

~~(c) The administrator and any personnel the administrator determines to be appropriate shall serve as staff to the committee.~~

~~(d) A chair and vice chair shall be elected by a majority vote of the committee.~~